IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 116-A of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

CONTROLLED ACCOUSTIC IND P LTD,MODASA.

Appearance:

MR BB NAYAK FOR MR MANISH R BHATT for Applicant.

MR MJ SHAH WITH MR JP SHAH for Respondent.

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

This reference is at the instance of the revenue. The following questions are referred in respect of the assessment year 1984-85 :

1 "Whether, the Appellate Tribunal is right in law in directing the Income-tax Officer to allow depreciation and investment allowance without deducting subsidy from the cost of the assets ?"

2 "Whether, the Appellate Tribunal is right in law in holding that the assessee is an industrial undertaking and entitled to claim investment allowance ?"

2 We have heard Mr.B.B.Nayak, learned Counsel for the revenue and Mr.M.J.Shah for the respondent-assessee.

3 As far as question no.1 is concerned, our attention is invited to the decision of the Apex Court in the case of C.I.T. vs. P.J.Chemicals Ltd., 210 ITR 830, laying down the principle that where the subsidy given by the Government is in the nature of general subsidy to encourage entrepreneurs to move to backward areas and establish industries, such subsidy is not to be deducted from the cost of the assets. Since, there is no dispute about the nature of the subsidy in the instant case i.e. subsidy was given for establishing industries in backward area, our answer to question no.1 is in the affirmative i.e. in favour of the assessee and against the revenue.

4 Coming to question No.2, we find from the facts noted by the Tribunal that the respondent assessee is engaged in manufacture of panels, hangers, angles, couplers from Alluminium sheets and Galvanised sheets for false ceiling of building, factory shed, office premises etc. These manufactured items are utilised by the appellant for its contract work with various parties. In view of this finding given by the Tribunal, we are of the view that the Tribunal is right in holding that the assessee is entitled to claim investment allowance. Accordingly, our answer to question no.2 is also in the affirmative i.e. in favour of the assessee and against the revenue.

5 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt